JURISDICTION OVER CHOSES IN ACTION. — The jurisdiction of equity is always *in personam*, except in those cases where statutes have given jurisdiction *in rem*. But no statute can confer jurisdiction *in rem* over property beyond the territorial limits of the legislative power. Where the owner of a chose in action is a non-resident, and the debtor is domiciled within the state, the courts have claimed jurisdiction on the ground that the *situs* of the debt is with the debtor. If a chose in action can have a *situs* at all, the domicile of the debtor will naturally be chosen for that purpose, since the debt must there be enforced. And it has been thus held in cases involving administration[1] and garnishment.[2] On the other hand, the *situs* of the debt is for many purposes said to be the domicile of the creditor, in accordance with the maxim: "*mobilia personam sequuntur.*" This has been so determined for purposes of taxation,[3] distribution of the assets of an intestate,[4] discharge of insolvent debtors,[5] and, by some courts, for the purpose of garnishment.[6] So too, the validity of an assignment is governed by the law of the place where it is made.[7]

It therefore appears that the so-called *situs* of a debt shifts to suit the convenience of the court. Rights are not predicated upon the *situs;* rather, the *situs* depends on the rights. The truth apparently is that a chose in action, being incorporeal, can have no real *situs*.[8] Jurisdiction must, therefore, depend on control over the parties. On principle, then, it would seem necessary to secure personal jurisdiction over a non-resident creditor in order to garnishee a debtor; for otherwise the decree, being neither against the person nor the property of the creditor, is void as made without due process.[9] But the law may be taken as settled that control over the garnishee alone confers jurisdiction.[10] Under either view, however, jurisdiction over the person of the creditor allows the chose in action to be taken by equitable execution.[11]

[1] Wyman *v.* Halstead, 109 U. S. 654; Att'y-Gen'l *v.* N. Y. Breweries Co., [1898] 1 Q. B. 205. But a bond is assets where found. Beers *v.* Shannon, 73 N. Y. 292. See also Epping *v.* Robinson, 21 Fla. 36.

[2] Mooney *v.* Railroad Co., 60 Iowa, 346; Mason *v.* Beebee, 44 Fed. 556.

[3] State Tax on Foreign-Held Bonds, 15 Wall. (U. S.) 300. *In re* Bronson's Estate, 150 N. Y. 1.

[4] Lowndes *v.* Cooch, 87 Md. 478. This accords with the usual rule of distribution in case of all personalty wherever situated. See 14 Cyc. 21. *Cf.* Murphy *v.* Crouse, 135 Cal. 14.

[5] Baldwin *v.* Hale, 1 Wall. (U. S.) 223, 233; Bank *v.* Batcheller, 151 Mass. 589. And see Cole *v.* Cunningham, 133 U. S. 107, 115.

[6] Central Trust Co. *v.* Ry., 68 Fed. 685; Louisville & Nashville Ry. *v.* Nash, 118 Ala. 477. See, however, a very recent case, Planter's, etc., Co. *v.* Waller, 49 So. 89 (Ala.), which greatly restricts the doctrine of Louisville & Nashville Ry. *v.* Nash, *supra.*

[7] Van Wyck *v.* Read, 43 Fed. 716; Glover *v.* Wells, 40 Ill. App. 350. But this is subject to the limitation that such assignment will not violate the settled policy of the debtor's domicile. Davis *v.* Mills, 99 Fed. 39. And in the case of stock the law of the state which incorporated governs the validity of the assignment. Masury *v.* Bank, 87 Fed. 381.

[8] Mooney *v.* Buford & George Mfg. Co., 72 Fed. 32; Lancashire Insur. Co. *v.* Corbett, 62 Ill. App. 236; Hardware Co. *v.* Lang, 127 Mo. 242.

[9] Blackstone *v.* Miller, 188 U. S. 189, 206; Maher *v.* Insur. Co., 127 N. Y. 452.

[10] The jurisdiction of the state being generally conceded, its decree will be binding on any other state. Hence the garnishee could not be compelled to pay twice, unless he fails in his duty to notify his creditor of the garnishment. Harris *v.* Balk, 198 U. S. 215; Chic. R. I. & P. Ry. *v.* Sturm, 174 U. S. 710; Morgan *v.* Neville, 74 Pa. St. 52.

[11] See Ames, Cases on Trusts, 2 ed., p. 444.

A practical objection to the law as settled on this point arises where the chose in action is represented by marketable securities. To allow garnishment or attachment by service on the debtor alone would impair the marketability of the documents. Accordingly it has been suggested that in such cases the *locus* of the documents should determine the *situs* of the debt.[12] But this distinction does not commend itself. The document, it is true, is a valuable *res*, but the debt remains enforceable only at the debtor's domicile; hence the reason for fixing the *situs* of the debt at the debtor's domicile is not affected. However, the state in which the documents are found has jurisdiction *in rem*, so that control over the documents is thus virtually a control over the debt.

There are, however, at least two instances where the courts of the debtor's domicile rightly exercise jurisdiction without control of the creditor's person. In both, the connection of the state with the creation of the obligation has been intimate. Thus a state rendering a judgment undoubtedly has jurisdiction over the judgment debt.[13] So, too, a state, having control over the relations between a corporation which it has created and the stockholders, has the sole right to determine questions of stock ownership raised by dispute as to the validity of a transfer,[14] or as to which one of two claimants shall vote certain shares. Thus a court of equity has been rightly held to have jurisdiction to declare a trust of certain shares, the legal ownership of which was in a non-resident holder, but the beneficial interest in which was claimed by the corporation issuing them. *Amparo Mining Co.* v. *Fidelity Trust Co.*, 73 Atl. 249 (N. J., Ct. App.).

POWER OF THE INTERSTATE COMMERCE COMMISSION TO FIX A RATE ON THE PRINCIPLE OF EQUALIZING ADVANTAGES. — By the Hepburn Act of 1906, amending the Interstate Commerce Act, power was given to the Interstate Commerce Commission "to determine what will be the just and reasonable rate or rates to be thereafter observed . . . as the maximum to be charged."[1] Although this section has been the object of much discussion by legal writers and economists, it has as yet come before the courts in very few instances. In the recent case of *Chicago, Rock Island & Pacific Ry. Co.* v. *Interstate Commerce Commission*, 171 Fed. 680 (Circ. Ct., N. D. Ill.), the court placed a very important limitation upon the power of the Commission under the section quoted. A base rate had been ordered from the Atlantic seaboard to Missouri River cities, which was lower than the sum of the rates from the seaboard to the Mississippi and from the Mississippi to the Missouri River cities. In the view taken by the court the Commission's sole purpose in making this rate was more nearly to equalize, in certain competitive territory, the advantage possessed by cities of the Middle West over the Missouri River cities, by reason of their location.[2]

[12] See Dicey, Conf. of Laws, 1 Am. ed. pp. 319–320. *Cf.* Plimpton *v.* Bigelow, 93 N. Y. 592; Bank *v.* Mather, 60 Minn. 362.

[13] Renier *v.* Hurlbut, 81 Wis. 24.

[14] Masury *v.* Arkansas Bank, 87 Fed. 381; Hammond *v.* Hastings, 134 U. S. 401. But see Kerr *v.* Urie, 86 Md. 72.

[1] U. S. Comp. St. Supp. 1907, p. 900.

[2] In the 22d Annual Report of the Commission (1908), p. 23, this order is referred